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LAND LEGISLATION

IN THE

CONVENTIONAL CONGO BASIN

TEXT

OF THE

GERMAN DECREE

THE LAND POLICY

IN

FRENCH WEST AFRICA

BRUSSELS

HAYEZ, PRINTER TO THE ROYAL ACADEMY OF BELGIUM

Rue de Louvain, 112

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Here is another proof of the good faith of the criticisms passed on the Congo Free State!

Everybody knows how desperately certain people maintain that by declaring vacant lands to be State property, by allowing all or part of such lands to be conceded to private individuals or to corporations, on certain conditions, the Congolese legislation is infringing the provisions of the Berlin General Act, so far as commercial freedom is concerned, and violating the rights of the natives.

But in doing so, the Free State is merely exercising an undisputable right. This point has been established by opinions under the signatures of Belgian and Foreign jurists whose names are an authority. We refer to Mess[rs] Van

Berchem, Van Maldeghem and De Paepe of the Belgian Court of « Cassation »; Messrs Westlake and Sir Horace Davey, both K. C. in England; Mr de Martens, permanent member of the Council of the Russian Ministry for Foreign Affairs; Mr Barboux, advocate of the Court of Appeal of Paris, etc.

Outside people are always able to contend in opposition to these opinions that in matters of law, everything can be sustained and owing to subtleties, everything can be demonstrated. But there are arguments against which even those who are unacquainted with juridical principles **can set up nothing**. What, for instance, is to be said when there are official texts to prove that the action complained of in respect to the Free State has been similarly adopted by all the European nations holding possessions in the Congo Basin, being precisely the zone covered by the provisions of the General Act of Berlin?

In the June 1903 number of the *Bulletin Officiel* of the Free State, will be found copies of a whole series of Ordinances and Decrees issued by France, Germany, Great Britain and Portugal in Africa. All these texts sanction the « *domanialité* » of ownerless lands in the same manner as the Congolese legislation does.

And now the official papers of Germany and France have just brought us, within a few days interval, two additional decrees confirming, by giving a decided character to this application of a right which, despite everything, some people continue to reproach to the Congo as a juridical heresy.

The *Amtlicher Anzeiger für Deutsch Ostafrika* publishes, under date of the 20th September, an Ordinance

issued by the Imperial Governor entitled « An Ordinance to protect the forests in German East Africa ». We will not enter into particulars of the regulations framed by this Ordinance, but we will merely say that it levies a tax at the rate of three tenths of the value, on the felling of trees and collection of barks in the domain not turned to account; the Government reserve themselves the right to extend such tax to other forest produce besides the above or to restrict the gathering thereof under such conditions as they might deem necessary, and also to **prohibit** the exploitation of forest produce of every description **on lands of the domain** not turned to account. (Forest produce is, within the meaning of the Ordinance, held to be the products of fenced or unfenced forests, as well as of isolated trees, of coppice, thickets, bamboos, palm-trees, creepers, principally the wood, bark, resin, gum, **rubber**, leaves, flowers and fruits.) The Government may also « *grant to certain undertakings* **the right of exclusive exploitation** » over forest produce, subject to special conditions. And Article 9 provides : « In the lands which, in consequence of occupation, have been declared, under public Notice of the Government, to be forest reserves, the exploitation of all forest produce whatsoever is prohibited and is **reserved to the Treasury** ».

On the other hand, only a few days since the French Minister for the Colonies submitted to the signature of the President of the Republic — the document is dated October 23 — a Decree consolidating the legislation of French West Africa in regard to the organisation of the public domain. Article 10 of this Decree begins as follows: « Vacant and ownerless lands in the colonies and territories of French West Africa are the property of the State ». The

next paragraph authorises the Lieutenant-Governor, subject to due compensation, to **sanction the alienation or sale of lands forming the joint property of the natives** or to order that such portion of said lands as might be necessary for the creation of urban centres or execution of public works shall be occupied for the purpose. The succeeding articles determine the conditions under which **concessions** of domanial lands are to be granted.

If there is anything conspicuous about this, it is the **identity** of the above regulations with those in force in the Congo. This would lead to believe, as it were, if such a thing could be, that the Congolese legislation has merely been an..... advanced copy of the German and French texts referred to.

But the old latin proverb is always true : « If you and I do the same thing, it is not the same thing! »

(Extract from *Étoile belge* of 5th November 1904.)

ANNEX I

—

Ordinance to protect the forests in German East Africa.

(Official text extracted from the *Amtlicher Anzeiger für Deutsch Ostafrika*, of 10th September, 1904.)

By virtue of Article 15 of the Protectorate law (*Reichs Gesetzblatt*, 1900, pp. 812 and seq.), in accordance with the Ordinance of the Chancellor of the Empire, dated 27th September 1903, as to the right of the authorities in the Protectorates in Africa and the Pacific to enact laws, and further, in conformity with Article 13 of the Imperial Ordinance dated November 26th, 1895, in reference to the domain in German East Africa, by and with the consent of the Chancellor of the Empire, it is ordered as follows for the territory of the Protectorate.

ARTICLE 1.

Forest produce shall, within the meaning of the present Ordinance, be the products of fenced or infenced forests as well as of isolated trees, of coppice, thickets, bamboos, palm-trees and creepers, principally the wood, bark, resin, gum, rubber, leaves, flowers and fruits.

ARTICLE 2.

Subject to the provisions of Article 8, forest produce of every description may, in the domain which has not been turned to account, be exploited by the natives and non-natives under the following conditions :

ARTICLE 3.

The felling of trees and the collection of barks irrespective whether the felled timber or removed bark are transported or employed, and subject to the provisions of Article 4, are liable to the payment of a tax at the rate of 3/10ths (three tenths)

on the value which said forest produce have on the spot prior to any further manipulation.

This value shall be fixed for the different portions of the Protectorate by Government Notice.

Failing such Notice, the value of the produce shall be assessed in each specified case, by the administrative Authorities of the district.

ARTICLE 4.

The tax provided for in Article 3, shall not be levied :

a) On wood required by the natives for building and repairing their huts and dwellings or necessary as fuel for the dwellings used by them ;

b) On wood required for the immediate building of churches, schools, chapels, bell-towers and for repairing the same or for use in erecting public buildings of the Communes ;

c) On wood free working of which has been granted in specified cases by an express authority in writing from the Government.

ARTICLE 5.

The stations where the tax provided for in Article 3 shall be payable, will be designated by Government Notice.

Payment of the tax shall be proved by a receipt which must be exhibited, on application, to the employes of the forests, police force, or customs, until such time as the forest produce subject to the tax shall have been turned to account.

ARTICLE 6.

Should a person in possession of forest produce collected on the domain and not turned to account, be unable to prove that he has paid the tax fixed by the present Ordinance or that he is exempted therefrom, he shall be required to discharge it, according to the rates in force in the place where the products lie.

ARTICLE 7.

Frauds in connection with the payment of the taxes leviable under the terms of this Ordinance will involve payment of five times the tax defrauded.

The offenders shall, moreover, be liable to a fine of up to 1,000 rupees and to an imprisonment up to three months, without prejudice to forfeiture of the tools and implements used in committing the infraction.

ARTICLE 8.

The Government may :

a) By a public Notice levy a tax, to come within the provisions of the present Ordinance, on the exploitation of produce other than that provided for in Article 3, arising from the lands referred to in Article 2.

b) Frame regulations as to the methods of collecting certain specified forest produce or subject this collection to certain conditions more specially as to replanting.

c) Prohibit the exploitation of forest products of every description or of certain kinds, on the lands referred to in Article 2.

d) **Grant to certain undertakings the right of exclusive exploitation over forest produce, subject to special conditions.**

ARTICLE 9.

In the lands which, in consequence of occupation, have been declared, under public Notice of the Government, to be forest reserves, the exploitation of all forest produce whatsoever is prohibited and is reserved to the Treasury.

ARTICLE 10.

Violation of the provisions of Articles 8 and 9 or of the prescriptions or prohibitions to be issued thereunder shall be punished as stated in Article 7, second paragraph, it being a rule that the fine and the penalty depriving the accused of his liberty may be pronounced jointly and that, in all cases, the forfeiture of the forest produce obtained by means of the infraction may be ordered.

ARTICLE 11.

The present Ordinance shall not affect the police regulations relating to forests and customs.

ARTICLE 12.

The present Ordinance shall enter into operation in the coast districts on the 1st October, and in the other districts on the 1st December, 1904.

The Ordinance dated 1st April 1899 regarding the collection of taxes on the felling of timber and Ordinance of 29th April 1900 on the same subject, together with the measures adopted for the execution of these Ordinances, are hereby repealed.

Dar-es-Salam, 9th September 1904.

The Imperial Governor,
(s.) C^te^ GÖTZEN.

ANNEX II

—

Decree organising the public property in French West Africa.

Paris, October 23, 1904.

MONSIEUR LE PRÉSIDENT,

The organisation of the public property in the possessions placed under the General Government of French West Africa has been regulated by various instruments which, though guided by common principles, offer somewhat material differences in point of detail of their dispositions.

The Governor General of French West Africa considered that the time had come to consolidate this legislation and to take advantage of the circumstance in order to give it more precision on certain points.

After taking into consideration the proposals formulated on the subject by the above-named high official, I have prepared the draft of a decree which I have the honour to submit herewith to your high sanction.

This draft applies both to the public domain and to the system of domanial lands; one of its chief provisions consists in abolishing the procedure peculiar in the countries of the Protectorate as instituted by former decrees, in regard to the utilisation of the domanial lands. In the domanial land system, it also does away with the special account of colonisation which in French West Africa has not up to the present received, nor can it receive, any practical application. Then the new regulation refers to the mode of alienation of lands and notably amends the extent of concessions granted either by the central or by the local authorities.

I have, etc.

The Minister of Colonies,
GASTON DOUMERGUE.

The President of French Republic,

Taking into consideration Article 18 of the senatus-consult dated the 3rd May 1854;

Taking into consideration the decree dated the 6th March 1877, rendering the Metropolitan Penal Code applicable in the Colonies of the Western Coast of Africa;

Taking into consideration the decrees dated 20th July 1900, 5th August 1900 and 24th March 1901 relating to the public domain in the colonies of Senegal, Ivory Coast, Dahomey and Guinea;

Taking into consideration the decree dated 1st October 1902 reorganising the general government of French West Africa;

Taking into consideration Articles 538, 540, 541, 649 and 650 of the Civil Code;

On the report of the Minister of Colonies,

Decrees :

TITLE I.

As to the Public Domain.

ARTICLE 1.

The following form part of the public domain in the colonies and territories of French West Africa :

a) The sea-shore up to the limit of the highest tides, as well as a zone of 200 metres measured from such limit;

b) The navigable water ways or those available for rafts within the limits determined by the height of the waters running even with the banks previous to overflowing, as also a passage zone of 25 metres in breadth from said limits upon each bank and upon each of the borders of the islands;

c) The springs and non-navigable water ways or those unavailable for rafts within the limits determined by the height of the waters running even with the banks previous to overflowing;

d) The lakes, ponds and lagoons within the limits determined by the level of the highest waters previous to overflowing with a passage zone of 25 metres in breadth from said limits upon each external bank and upon each of the borders of the islands;

e) The navigation canals and their track-roads, the irrigation and draining canals and the aqueducts built with the view of public utility, and also the appurtenances of these works;

f) The railways, roads and ways of communication of every description, the ports and roadsteads, the sea and river dykes, the semaphores, the light-houses and beacons and their appurtenances;

g) The telegraph and telephone lines and also their appurtenances;

h) The works which have been declared as of public utility with the view of utilising hydraulic power and of transporting electric energy;

i) The fortification works in fortified places or military posts as also a zone of 250 metres in breadth around such works;

k) And generally the property of every nature which the Civil Code and French laws declare not susceptible to become private property.

ARTICLE 2.

Persons living along the riverside of non-navigable water ways or of those unavailable for rafts are subject to a passage easement over a zone extending 19 metres in breadth on each bank.

ARTICLE 3.

The lands of the buildings of private properties are liable to all the easements of passage, implanting, supporting and circulation

necessary for the establishment, maintenance and working of telegraph and telephone lines and of conductors of electric energy, classified in the public domain.

ARTICLE 4.

No indemnity is due to the owners in consideration of the easements established in virtue of the foregoing Articles 2 and 3.

ARTICLE 5.

In the event of doubt or dispute respecting the limits of the public domain or the extent of the easements established under Articles 2 and 3, the matter shall be settled by decision of the Lieutenant-Governor of each colony, subject to right of appeal to the Council of administrative disputes.

ARTICLE 6.

The Lieutenant-Governor shall grant permissions to occupy the public domain and to erect thereon any establishments whatsoever in conformity with the terms laid down by the general regulations referred to in Article 8 below.

He may in like manner sanction derogations to the passage easement provided for in Article 2.

The authorities granted in pursuance of the two foregoing paragraphs may be revoked at any time without compensation on the grounds of public interest by an order of the Lieutenant-Governor in administrative Council.

ARTICLE 7.

The portions of the public domain which might be found to be of no utility for the public services may be altered as to classification by an order of the Governor General in which case they will come within the domain of the State.

The decree shall only be executory after approbation by the Minister of Colonies.

These parcels of land may be abandoned free to *bona fide* occupiers and holders, who shall thenceforth be deemed to be the owners.

Article 8.

General regulations framed by the Governor General in Government Council shall contain the rules relative to the police, the preservation and utilisation of the public domain as well as to the exercise of the easements of public utility and military easements.

Infringements to said regulations shall be punished by a fine of from 1 franc to 300 francs without prejudice to the reparation of the damage occasioned and to the official demolition of works unduly established in the public domain and in the easement zones.

The infringements shall be recorded in reports of facts drawn up by the officers commissioned by the Lieutenant-Governors.

Article 9.

Holders of lands comprised in the public domain who own these lands in virtue of regular and definite deeds prior in date to the promulgation of the decrees of the 20th July 1900 for the Ivory Coast, 5th August 1900 for Dahomey and 24th March 1901 for French Guinea, shall not be dispossessed, if the public interest so required, except upon previous payment or consignment of the fair compensation.

This will also be the case, should the public interest require, for the exercise of the easements provided for Articles 2, 3 and 4, the demolition of the buildings or removal of the fencing or plantations established by the said holders prior to the promulgation of the decrees hereinbefore referred to.

The compensation shall be assessed subject to appeal to the Council of administrative disputes, by an arbitration commission consisting of three members, one of whom shall be designated by the Lieutenant-Governor, another by the owner and the third by the two first named by mutual agreement.

Failing the owner selecting his arbitrator within a period of three months, and in case an agreement could not be arrived at in regard to choosing the third arbitrator, such designations shall be made by the President of the Court in the chief-town in the Colony.

TITLE II

As to domanial lands.

ARTICLE 10.

Vacant and ownerless lands in the colonies and territories of French West Africa are the property of the State.

The lands forming the joint property of the natives or held by native chiefs as representing the native corporations shall not be disposed of to private individuals by way of sale or hire, except after approbation by an order of the Lieutenant-Governor in administrative Council.

The occupation of such portion of said lands as might be necessary for the creation of urban centres, for buildings or public works shall be adjudicated by the Lieutenant-Governor in administrative Council who will determine the compensations involved by such occupation.

ARTICLE 11.

The alienation of domanial lands is subject to the following rules :

1. Lots of urban land comprised in an apportionment approved by the Lieutenant-Governor in administrative Council and concessions of less than 200 hectares shall be granted by the Lieutenant-Governor in administrative Council, upon the terms determined in each case by the deed of concession itself according to locality, nature of the land and of the exploitation to be undertaken;

2. Concessions extending over an area ranging between 200 and 2,000 hectares shall be granted by the Governor General on the proposal of the Lieutenant-Governor, by and with the advice of the Council of administration;

3. Concessions extending over a larger area than 2,000 hectares shall be granted by decree rendered on the report of the Minister of Colonies, on the proposal of the Governor General, by and with the advice of the Commission of colonial concessions.

In the two last mentioned cases, the conditions of the concession shall be stipulated in a schedule of terms and conditions annexed to the deed of concession, which will also fix the rate of royalties.

ARTICLE 12.

The grant of any concession must be advertised sufficiently beforehand so that all persons entitled may come forward and their interests may be properly examined prior to the deed of concession being drawn up.

The deed or concession shall state in what manner the above publicity has been effected and it shall be inserted in the *Journal officiel* of the Colony.

ARTICLE 13.

All former provisions inconsistent with the present decree are hereby repealed.

ARTICLE 14.

The Minister of Colonies is entrusted with the execution of the present decree which shall be inserted in the *Journal officiel* of the French Republic, in the *Bulletin des lois* and the *Bulletin officiel* of the Colonies.

Done in Paris, on October 23, 1904.

ÉMILE LOUBET.

By the President of the Republic

The Minister of Colonies,

GASTON DOUMERGUE.